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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

DAVID H. LUCAS,

Petitioner,

v.

SOUTH CAROLINA COASTAL COUNCIL,

Respondent.

On Writ of Certiorari to The Supreme Court of the State of South Carolina

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BRIEF OF SOUTH CAROLINA POLICY COUNCIL EDUCATION FOUNDATION AND GEORGIA PUBLIC POLICY FOUNDATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF AMICI

The South Carolina Policy Council Education Foundation ("South Carolina Policy Council") and Georgia Public Policy Foundation ("Georgia Policy Foundation") submit their brief as *amici curiae* in this case. The parties have consented to the filing of this brief, and their consent letters have been filed with the Clerk of this Court.

The South Carolina Policy Council and Georgia Policy Foundation are non-profit research and education foundations. Their members include more than 500 citizens of South Carolina and Georgia, including numerous current or former U.S. and state legislators, local elected officials, and the executive officers of

more than one hundred small businesses, corporations, and trade associations operating within their respective states.

The South Carolina Policy Council and Georgia Policy Foundation are organized for the purpose of advancing public interest viewpoints on legal and public policy questions of significant concern to the people of South Carolina and Georgia. Their members believe that the well-being and future hopes of our nation are best advanced by public policies that spur economic growth, enhance individual opportunity, empower citizens, and defend traditional economic principles and social values. In recognition of this, the two organizations include in their areas of concern the government's treatment of private property and other civil rights.

STATEMENT OF THE CASE

Amici South Carolina Policy Council and Georgia Policy Foundation adopt the statement of the case contained in the brief of the Petitioner.

SUMMARY OF ARGUMENT

The standard established by the Supreme Court of South Carolina allows the state to declare a traditional, basic use of property, and hence almost any use, a "serious public harm," even though the state is not prohibiting that use elsewhere. By using the "serious public harm" label, the State of South Carolina can avoid compensating private property owners for any taking of their property.

Furthermore, the State's claim that it is protecting the public is erroneous. South Carolina is not protecting its citizens from a classic harm, but actually is conferring a benefit on them. If the state wishes to confer those benefits, it has the power to do so, but it should place the cost on the citizens benefited, not the person who invested in the property.

Finally, the protection of property rights was at the core of the purposes for which our government was formed, and property rights should be given the same protection as all other civil rights.

ARGUMENT

I.

THE SOUTH CAROLINA SUPREME COURT'S RELIANCE ON A NUISANCE THEORY CREATES AN ERRATIC STANDARD INCAPABLE OF PROTECTING INDIVIDUAL CIVIL RIGHTS.

David Lucas spent almost $1 million on 2 beachfront lots on which he planned to build houses. He did not seek to discharge pollutants, dredge sand from the seashore, or even operate a business. He planned to use the lots for the simple purpose for which they had been appraised, for which real property throughout time has been employed, and, in fact, for which beachfront lots adjoining his have been used for years.

Almost two years later, the South Carolina legislature passed a coastal protection law that, in effect, prohibited Mr. Lucas from constructing any buildings on his property. The law wiped out Mr. Lucas's investment. Nevertheless, the Supreme Court of South Carolina held that he was not entitled to compensation because "when a State merely regulates use, and acts to prevent a serious public *harm*, there is no 'taking' for which compensation is due." *Lucas v. South Carolina Coastal Council*, 404 S.E.2d 895, 900 (S.C. 1991), *cert. granted*, 112 S.Ct. 436 (1991) (emphasis in original).

This holding is troublesome for two reasons. First, the simple act of building a house has never been considered a

"serious public harm," and South Carolina's statutory scheme does not treat it as such. Second, the court creates an open-ended test by which a government can avoid compensating citizens simply by giving its activities the correct label.

Building a home, which was the proposed, and originally appraised, use of the lots, is hardly the "nuisance-like conduct" that this Court has held to be beyond the protection of the Fifth Amendment. *See, e.g., Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470 (1987) (prohibiting mining that might cause subsidence); *James Everard's Breweries v. Day*, 265 U.S. 545 (1924) (prohibiting sale of malt liquors even for medicinal purposes); *Hadacheck v. Sebastian*, 239 U.S. 394 (1915) (prohibiting brickyards in residential area).

Building a home on one's own land is one of the most basic uses of property, and one of the most fundamental rights of property ownership. *Cf., Nollan v. California Coastal Commission*, 483 U.S. 825, 833 n.2 (1987) ("the right to build on one's own property--even though its exercise can be subjected to legitimate permitting requirements--cannot remotely be described as a 'government benefit'"). Building a home is hardly "unreasonable use of . . . one's own property, to the detriment, hurt, annoyance, discomfort, injury, or damage of another." Joyce, *Nuisance* § 11 (1906).

Nor does the statutory scheme treat beachfront development in itself as a classic nuisance. The legislative findings recite great harm that the government believes has resulted from past construction on the beaches:

> (4) . . . Consequently without adequate controls, development unwisely has been sited too close to the system. This type of development has jeopardized the stability of the beach/dune system,

accelerated erosion, and endangered adjacent property. It is in both the public and private interests to protect the system from this unwise development.

(5) The use of armoring in the form of hard erosion control devices such as seawalls, bulkheads, and rip-rap to protect erosion-threatened structures adjacent to the beach has not proven effective. These armoring devices have given a false sense of security to beachfront property owners. In reality, these hard structures, in many instances, have increased the vulnerability of beachfront property to damage from wind and waves while contributing to the deterioration and loss of the dry sand beach which is so important to the tourism industry.

S.C. Code Ann. § 48-39-250 (1990 Supp).

The statutory scheme proceeds to address these harms of *past* construction by prohibiting *future* construction. S.C. Code Ann. § 48-39-290 (A) (1990 Supp). *Existing* structures (which according to the legislature caused all of the existing harm) may be replaced, *id.*, § -290 (B)(1)(b)(iv) & (v); repaired, *id.*, § -290 (B)(1)(b)(i); and even expanded, *id.*, § -290 (B)(1)(b)(ii).

The legislative findings do not explain why future construction on the beaches of South Carolina poses more of a threat to the environment than do existing structures. Indeed, insofar as the harm that the legislature wishes to prevent, there is no principled difference between proposed and existing buildings. The best way to preserve the coastline no doubt would be to raze the existing dwellings, or at least prevent them from being repaired or replaced.

The South Carolina legislature no doubt had powerful reasons for choosing not to require its constituents to destroy their homes. Yet those reasons are not sufficient to transform proposed construction into a nuisance, or to make the damage to Mr. Lucas' property any less a taking than would be the destruction of an already existing building.

The South Carolina legislature, then, is not treating coastal construction as a true "nuisance-like activity." Rather, it is making arbitrary and politically convenient distinctions between property owners. It is this placing of disparate burdens that the Fifth Amendment was designed to prevent. The taking doctrine

> prevents the public from loading upon one individual more than his just share of the burdens of government, and says that when he surrenders to the public something more and different from that which is exacted from other members of the public, a full and just equivalent shall be returned to him.

Monongahela Navigation Co. v. United States, 148 U.S. 312, 325 (1893). *See also, Nollan v. California Coastal Commission*, 483 U.S. 825, 835 n. 4 (1987) ("If the Nollans were being singled out to bear the burden of California's attempt to remedy these problems, although they had not contributed to it more than other coastal landowners, the state's action, even if otherwise valid, might violate either the incorporated Takings Clause or the Equal Protection Clause").

The specter of thousands of families being required to destroy their homes in order to protect the environment illustrates the danger of the test that the South Carolina court has established, and is not as far-fetched as one might hope. Numerous owners of homes in Massachusetts that were destroyed by a hurricane this past summer have been told that they may not rebuild their homes

because of environmental regulations. *Insight on the News*, December 2, 1991, at 29. The justification that the state has given is "safety and health" and prevention of public harm. *Id.*

It is not clear whether Massachusetts has decided that the affected homeowners are entitled to compensation. It is clear, however, that under the South Carolina court's formulation, the property owners would receive nothing. If the state decides that rebuilding a home would be a "threat to the public", then the homeowners need not be compensated. No doubt, the property owners can comfort themselves with the thought that their homelessness is actually a service to their community.

The danger in this case stems from the South Carolina court's uncritical deference to the legislature's good intentions. There is no reason to believe that the legislature was motivated by anything other than a desire to help the public, but good intentions are not an adequate protection against abuse of power. As Justice Holmes once noted, "Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent." *Olmstead v. United States*, 277 U.S. 438, 479 (1928).

It is never difficult for a government to find noble motives for its actions. Most infringements on personal liberty are prompted by quite reasonable, even laudable, impulses. *See, e.g., Simon & Schuster, Inc. v. Members of New York State Crime Victims Board*, 60 U.S.L.W. 4029 (U.S. Dec. 10, 1991) (state's desire to compensate crime victims was laudable, but its efforts violated the first amendment); *Minnick v. Mississippi*, ____ U.S. ____, 111 S.Ct. 486 (1990) (right to counsel during police interrogation); *City of Richmond v. J.A. Croson Co.*, ____ U.S. ____, 109 S.Ct. 706 (1989) (city's effort to remedy past discrimination was nevertheless a violation of the equal protection

clause). The essence of constitutional protection is a declaration that, no matter how high-minded the goal, there are some things that a government simply may not do.

This is particularly true in relation to the just compensation clause. "The police power cannot be interpreted as an unrestricted grant of state power to act in the public interest, for then the exception will overwhelm the clause." Epstein, *Takings: Private Property and the Power of Eminent Domain* 109 (1985).

That prediction has come true in this case. The South Carolina high court has so broadly interpreted the police power as to allow the legislature to nullify the just compensation clause. If the South Carolina government truly wishes to benefit its citizens, it can call on those citizens to bear the cost. What it cannot do is suddenly decree that a fundamental, long-recognized use of property is now a "nuisance," differentiate between people who perpetuate the supposed nuisance, and then try to justify itself by claiming good intentions.

II.

ALTHOUGH SOUTH CAROLINA HAS THE POLICE POWER TO PROHIBIT COASTAL CONSTRUCTION, THE STATE SHOULD REQUIRE THE GENERAL PUBLIC RATHER THAN PRIVATE INDIVIDUALS TO FINANCE THOSE RESTRICTIONS.

The issue in this case is not whether South Carolina can pass legislation to protect the environment. Certainly it is within a state's power to protect its natural resources. The question is

who must pay for that protection. The essence of the prohibition against taking property without just compensation is that the government may not force "some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960). The South Carolina Beachfront Management Act imposes just such a burden.

The first reason for placing the financial burden of the statute on the state's taxpayers is that the law does not so much prevent a burden on the public as confer a benefit. There can be no doubt that environmental issues concern the public at large, and that laws designed to protect the environment benefit the public. Funding an affirmative benefit, however, is not the sort of burden that a government legitimately may impose on its citizens.

The Beachfront Management Act is different from such traditional environmental laws as prevention of pollution, 33 U.S.C.A. § 1251, *et seq.* (1986) (Clean Water Act), or protection of endangered species, 16 U.S.C.A. § 1531, *et seq.* (1985) (Endangered Species Act). As explained above, building a dwelling is not an activity normally considered to harm the public. Certainly, South Carolina does not consider the structures already built to be harmful. Rather, the state is placing an affirmative burden on Mr. Lucas, and requiring that he use his property to *benefit* his neighbors, many of whom are enjoying on their properties the activity that he is forbidden.

This beneficial nature of the statutes can be seen in several aspects of the program. First, as discussed already, the statute does not prohibit all activity that it links to environmental harm. Those people currently damaging the beach through their structures need not cease that damage. Only certain people, like Mr. Lucas, need bear the burden of "protecting" the coast.

Furthermore, the statute is designed to do more than protect the environment. One of the major concerns of the legislative findings is the "tourism industry that generates approximately two-thirds of South Carolina's annual tourism industry revenue which constitutes a significant portion of the state's economy." S.C. Code Ann. § 48-39-250 (1)(b) (1990 Supp). The prohibited erosion control devices have contributed "to the deterioration and loss of the dry sand beach which is so important to the tourism industry." S.C. Code Ann. § 48-39-250 (5) (1990 Supp). One of the state's goals is to preserve "dry sand beaches which provide recreation and a major source of state and local business revenue." S.C. Code Ann. § 48-39-269 (1)(b) (1990 Supp).

This concern with maximizing economic benefits for a particular industry fits squarely within the category that Professor Joseph Sax has described as the "enterprise function" of government. Sax, *Takings and the Police Power*, 74 Yale L. J. 36 (1964). Such activities serve to promote the public welfare, not protect it from harm, and as such are compensable takings.

The District Court of Appeal of Florida noted this distinction between preventing a harm and conferring a benefit in *State Dept. of Agriculture & Consumer Servs. v. Mid-Florida Growers, Inc.*, 505 So.2d 592 (Fla. Dist. Ct. App. 1987), *approved*, 521 So.2d 101 (Fla. 1988), *cert. denied*, 488 U.S. 870 (1988). The State of Florida had required a citrus nursery to destroy some of its stock. Although the citrus budwood to be destroyed was healthy, the plaintiff had bought it from another nursery where the state discovered citrus canker. After the state burned the trees, the nursery sued for compensation.

The District Court of Appeal held that the state's action, which it termed "a valid exercise of police power," caused a taking of property. *Id.* at 595. The court made a distinction between

destroying diseased property, which is "a source of public danger," *id.*, and destroying healthy stock "to protect public health, safety or welfare." *Id.* The court noted the danger of citrus canker, and the difficulty in determining whether healthy trees carried the disease. The court concluded:

> Destruction of the healthy trees, however, assured the continued vitality of Florida's most valuable citrus industry. Because destruction of the healthy trees benefitted the entire citrus industry and, in turn, Florida's economy, the cost is more properly spread among the many rather than the few who were unfortunate enough to have purchased budsticks from the infected nursery.

Id. at 595-96. The Florida Supreme Court approved this reasoning, noting its view that "if a regulation creates a public benefit it is more likely to be a taking." *Mid-Florida Growers, Inc.*, 521 So.2d at 103.

The house that Mr. Lucas proposes to build is analogous to the healthy trees in *Mid-Florida Growers, Inc.* The house itself would not be dangerous, and would not discharge noxious substances onto anyone else's property. The state wants to restrain Mr. Lucas simply because it wants to confer a benefit on the shoreline, the tourism industry, and South Carolina's economy.

Admittedly, the distinction between preventing a harm and conferring a benefit is not always a clear one. The principle, however, does have strong roots in our law. For example, tort law long has distinguished between the duty to refrain from harming someone, and the duty to affirmatively help them. *Cf.*, *Miles v. Melrose*, 882 F.2d 976, 992 (5th Cir. 1989) (noting differing duties placed on person controlling machinery and a bystander merely observing the danger), *aff'd on other grounds, sub nom, Miles v. Apex Marine Corp.*, ___ U.S. ___, 111 S.Ct. 317 (1990).

The distinction between harm and benefit, as fuzzy as it is, certainly offers more clarity than the current state of takings law. As one commentator has noted, "[A]t the present time the harm-benefit test offers the best hope, despite all the difficulties of its application, of making sense out of the cases." Tarlock, *Regulatory Takings*, 60 Chi.-Kent L. Rev. 23, 37 (1984).

A second reason for placing the financial burden of the Beachfront Management Act on the state is that when the public receives a benefit from an individual, the public should pay for it. State governments currently face various budget crises and taxpayer dissatisfaction. If citizens do wish to protect the environment, however, they will be willing to bear the cost. It is not the proper function of state government to paternalistically decide that a program is good for the public, and then hide the cost by imposing it on a small group of citizens. A government that possesses the coercive power to raise money can hardly claim that its individual citizens are better able to fund programs that the government deems desirable.

It is no accident that many states enacted coastal protection acts after Congress authorized federal funds for such programs. Coastal Zone Management Act of 1972, Pub. L. No. 92-583, 86 Stat. 1280, *codified as amended*, 16 U.S.C.A. §§ 1451-1464 (1988). *See also*, Zalkin, *Shifting Sands and Shifting Doctrines: The Supreme Court's Changing Takings Doctrine and South Carolina's Coastal Zone Statute*, 79 Cal. L. Rev. 205, 216-18 (1991) (listing states that have enacted coastal protection laws). It seems hardly fair for a government to establish such a program using another group's funds, and then face no liability for its decisions.

Finally, requiring the state to pay compensation serves the very important function of deterring legislatures from experimenting at the expense of others. "When municipal officials are able to deflect the costs of a public measure to those who lack the right to vote in municipal elections (or who are vastly outnumbered at the polls), a rule requiring compensation by shifting the costs back to the electoral majority, may help induce these officials to weigh more accurately the costs and benefits of alternative measures." Ellickson, *Suburban Growth Controls: An Economic and Legal Analysis*, 86 Yale L. J. 385, 420 (1977).

All too often, legislatures decide on a particular program for reasons only distantly related to the public good. At other times, a legislature will sincerely intend to benefit the public, but, as this nation discovered during Prohibition, the laws will miss their mark. It is always easier to gamble with someone else's money than with your own.

If the government of South Carolina is convinced that prohibiting future construction is necessary to protect its coastline and tourism industry, and that that goal is an important one, then it should back its plan with its own money. If the state does not believe in a program enough to put it in the budget, then it should not put it in the statute books.

In this case, the State of South Carolina has chosen to reap the benefits of "complete dominion and control over the surface of [Mr. Lucas'] land," *United States v. Causby*, 328 U.S. 256, 262 (1946), without bearing any of the resulting responsibility. South Carolina has in effect forced Mr. Lucas to make a $1 million donation to the coastline protection and tourism industry in that state.

If Mr. Lucas had invested his money in a savings account and the state appropriated it, the law would call that theft,

regardless of the state's motives. The fact that Mr. Lucas invested his money in land instead of a bank does not give the state any greater right to high-handedly wipe out his investment. This Court's description of the government's taking in *Armstrong v. United States*, 364 U.S. 40 (1960), applies equally to this case:

> The total destruction by the Government of all value of [this property] has every possible element of a Fifth Amendment "taking" and is not a mere "consequential incident" of a valid regulatory measure. Before the [property value was] destroyed, [Mr. Lucas] admittedly had compensable property. Immediately afterwards, [he] had none. This was not because [his] property vanished into thin air. It was because the Government for its own advantage destroyed the value of the [property] . . . . .

Id. at 48.

As in *Armstrong*, if the government believes it advantageous to destroy the value of Mr. Lucas's property, then the government should pay for that advantage.

III.

PROPERTY RIGHTS SHOULD BE PROTECTED AS STRINGENTLY AS OTHER CIVIL RIGHTS.

In the final analysis, this Court must determine what place property rights have in the constitutional hierarchy. The right to just compensation is part of the Fifth Amendment, which also provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, . . . nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; . . . .

U.S. Constitution, Amend. V.

This Court has built strong protections around such Fifth Amendment rights as the prohibition against self-incrimination and double jeopardy. If the State of South Carolina were to claim that, because of budget constraints, it could no longer provide for grand jury indictments of those accused of environmental crimes, federal courts would be swift to announce that neither an admirable concern for the environment nor the realities of fiscal problems would justify deprivation of such a basic right. The response would be similar to infringements on other rights, such as free speech or the right to counsel, no matter how loudly the state

proclaimed its desire to protect the environment.

Yet, the South Carolina court has allowed the state to deprive a man of his property in the name of environmentalism and tourism. This decision short-changes one of our basic personal liberties. Property rights are certainly as important as every other civil right, and should be treated as such.

In fact, property well may be considered the foundation for the other civil rights that we enjoy. John Locke, whose writings influenced the leaders of the American Revolution and the framers of the Constitution more than any other single philosopher, described the preservation of property as "the end of government, and that for which men enter into society." John Locke, *Of Civil Government* ¶ 138, quoted in Epstein, *Takings: Private Property and the Power of Eminent Domain* 14 (1985). Locke even went so far as to say, "Lives, Liberties, and Estates, which I call by the general Name, *Property*." Locke, *The Second Treatise of Government* § 123 (revised ed. P. Laslett ed. 1965) (emphasis in original).

Locke's view found its way into both the English common law and the Enlightenment that generated our government. Private property and a free society were "so intimately connected as to be all but equivalent." Pilon, *Property Rights, Takings, and a Free Society*, 6 Harv. J. L. & Pub. Pol. 165, 168 (1983).

This Court has recognized the interplay between property rights and other civil rights. "The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth, a 'personal' right, whether the 'property' in question be a welfare check, a home, or a savings account. In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other." *Lynch v. Household Finance*

Corp., 405 U.S. 538, 552 (1972).

Like other civil rights, property rights include the authority to dominion and use as one sees fit. "There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe." W. Blackstone, *Commentaries* 2 (1765). Those rights of dominion, however, always have been limited by "the laws of the land," *id.*, to the extent that those laws are legitimate.

Government exercise of power, in a representative government, is legitimate only so long as it is compatible with the source of its authority -- the individuals whom the government rules. As Locke expressed it, a legislature is "but the joint power of every member of the society given up to that person or assembly." Locke, *Of Civil Government* ¶ 19 (1690), *quoted in* Epstein, *Takings* at 12. Thus, a government has no more power than individuals can transfer to it.

For example, government has the right to punish thieves because its citizens have transferred that right. No individual, however, has the right to be a thief; therefore, the government has no right to "take away from any man any part of his property without his consent." *Id.*

Eminent domain is an exception to that general principle. When the state takes private property for public use, it is a forced transaction, pure and simple. It cannot be justified under any of the traditional powers of government. A person whose property is taken is rarely harming others; he is simply enjoying property that, because of location or other factors, the government happens to want.

The only justification for eminent domain is that of necessity. Because of the circumstances in a given case, society will cease to function in one respect or another if a given individual does not yield his rights in his property. "All private property is held subject to the necessities of government. The right of eminent domain underlies all such rights of property." *United States v. Lynah*, 188 U.S. 445, 465 (1903).

Thus, the state, acting on behalf of the majority, can override the rights of a minority. In those exceptional cases, however, such raw exercises of power are made palatable only by just compensation from the majority to the minority for the lost rights:

> The government may take personal or real property whenever its necessities, or the exigencies of the occasion, demand. So, the contention that the government had a paramount right to appropriate this property may be conceded, but the Constitution in the 5th Amendment guarantees that when this governmental right of appropriation--this asserted paramount right--is exercised it shall be attended by compensation.

Id.

The only way to take property without compensation is to change the terms of the equation--for example, to deny that what the person held was "property," *e.g.*, *Beckwith v. Webb's Fabulous Pharmacies, Inc.*, 374 So.2d 951 (Fla. 1979) (state could appropriate interest on money deposited in interpleader fund because such interest was public money, not private property), *rev'd*, 449 U.S. 155 (1980). In this case, there can be no doubt that what Mr. Lucas held was private property. What the South Carolina government has attempted to do is change other terms of

the equation--to deny that Mr. Lucas actually has rights in that property.

The state legislature decided that "the economic and social improvement of the coastal zone and of all the people of the State," S.C. Ann. § 48-39-30 (A), requires overriding Mr. Lucas's traditionally-recognized rights in his property. Essentially, South Carolina has taken away from Mr. Lucas the rights to enjoy his property, and transferred those rights to tourists and sightseers. The fact that the state has left title to the land with Mr. Lucas is irrelevant. "While the government does not directly proceed to appropriate the title, yet it takes away the use and value; when that is done it is of little consequence in whom the fee may be vested." *United States v. Lynah*, 188 U.S. 445, 470 (1903).

Although the state certainly has the power to transfer those rights, it does not have the right to do so, at least in a representative system of government. Mr. Lucas has done and proposes to do nothing that will harm his neighbors. He has done nothing to otherwise forfeit his rights to the enjoyment of his property. The state simply has decided that it prefers to grant his rights to other people. In short, the state has appropriated Mr. Lucas's past efforts and investment decisions, and is using him for its own ends. *See, e.g.*, Pilon, *supra* p. 14, at 175-178. That process simply is not compatible with a society that values individual liberties.

This case falls within the outlines of the classic eminent domain situation. The state wants control over Mr. Lucas' property not because of what he wants to do with it, but because of where the property is located. Mr. Lucas' proposed use of his property would not harm others, unless in an indirect way that is currently permitted to thousands of his fellow citizens. Rather, the state simply has decided that it wants Mr. Lucas to use his

beachfront property in a certain way.

Perhaps the state is correct in its belief that it is acting out of necessity. Even necessity, however, can be justified only if Mr. Lucas receives an adequate substitute for his property rights. Otherwise, this case is nothing more than a raw exercise of government power without even lip service to the individual rights that have been one of this country's most valued contributions to the world.

This case presents this Court with the opportunity to declare whether property rights have equal stature with all other constitutional rights, or whether they are simply an interesting nostalgic footnote. The interpretation of the Supreme Court of South Carolina, if it stands, will relegate traditional property rights to the pages of history books, where they will become merely a backdrop for the state's power to legislate without liability.

CONCLUSION

For all of the foregoing reasons, *amici* respectfully request that this Court reverse the decision of the Supreme Court of the State of South Carolina.

Respectfully Submitted,

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